**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**

**CRIMINAL APPEAL No. 686 of 2000**

**For Approval and Signature:**

**HONOURABLE MR.JUSTICE S.R.BRAHMBHATT**

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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**STATE OF GUJARAT THRO' P K PATEL - Appellant**
**Versus**
**RAJESHBHAI BABULAL SHAH - Respondent**

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**Appearance :**
MR. M.A. PATEL, LD. APP for Appellant:
MR DK MODI for Opponent :
MR MD MODI for Opponent :

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**CORAM : HONOURABLE MR.JUSTICE S.R.BRAHMBHATT**

**Date : 12/06/2006**

**ORAL JUDGMENT**

1.Heard Shri. M.A. Patel, learned Addl. Public Prosecutor for the appellant State of Gujarat and Shri. D.K. Modi, learned counsel for the

respondent / original accused.

2. The State of Gujarat – Appellant has preferred this appeal under section 378 of the Code of Criminal Procedure, challenging the order of acquittal dated 23/3/2000 passed by learned Metropolitan Magistrate, Court No. 8, Ahmedabad in Criminal Case No. 38 of 1997 acquitting the present respondent / original accused under section 7 (1) (5) and 16 of the Prevention of Food Adulteration Act, 1954 (hereinafter referred to as 'the Act'). This Court had granted leave and admitted the appeal vide order dated 27/06/2002.

3. The facts in brief are as under :-

3.1 The original complainant Shri. P.K. Patel, Food Inspector visited the shop of the accused on 1/4/1997 in presence of one Arifbhai Usmanbhai Ansari. At that time in that firm packing of salt was going on. After revealing his identity and his intention to collect the salt sample for examination, he purchased 700 grams of iodized salt. The relevant notice under Form No.6 has been issued to the vendor. The salt was thereafter divided into 3 parts

and collected in odourless cleaned bottles. The cash memo for payment of price of the salt was collected and receipt was issued. The bottles were fastened with air-tight lid so as to prevent any moisture from getting into it and after applying the seal etc. in strict compliance with Prevention of Food Adulteration Rules, 1955 (hereinafter referred to as th 'Rules'); one portion of the sample food article was sent to the Public Analyst on the next day i.e. on 2/4/1997. The remaining 2 parts/portion of sample article were sent to the Public Health Authority. The necessary seal impression etc. were also sent in strict compliance with the provisions of Law and the Rules in collecting the sample, in sealing the same and sending it to the Public Analyst. Shri. Patel has further submitted that the food article in question was not in conformity with the provisions of the PF Act and therefore the same deserves to be viewed seriously. Shri. Patel has submitted that the judgment of the trial court suffers from patent illegality in as much as though there were sufficient evidence to show that there was total compliance with provisions of Rule-14, the trial court has come to the conclusion that,

there was non compliance of mandatory provisions of Rule 14 and therefore it was held that prosecution has failed in bringing its case beyond doubt. Shri. Patel has drawn this Court's attention to the deposition of the Food Inspector – original complainant in support of his submission that there was complete compliance with the provisions of the Food Adulteration Act and Rules. Shri. Patel has submitted that the plea of defence that the notice issued by the Local Health Authority in compliance with provision of Section 13 of the PFA Act had never been received or in other words service of notice as urged has not been accepted by the trial court. Shri. Patel has submitted that this being a serious offence the acquittal has wrongly been recorded which deserves to be quashed and set aside. Shri. Patel has submitted that non compliance of Rule 14 can not be said to have been established against the prosecution. In fact the deposition show that cleaned bottles were used and therefore there was compliance with Rule 14. Shri. Patel has submitted that as the report of the Public Analyst is absolutely clear on the aspect that food stuff being not in conformity with the standards laid down by PFA Act and

Rules the order of acquittal deserves to be quashed and set aside, and as food adulteration being a serious offence the accused deserves to be dealt with accordingly.

3.2 Shri. Modi, learned counsel for the respondent / original accused has submitted that the order of acquittal and the judgment of the trial court deserves to be sustained only on the grounds mentioned by the trial court but also on the grounds which have not been accepted by the trial court, namely non compliance or defective procedure of effecting service of notice under section 13 (2) of the Act to the accused. Shri. Modi has submitted that there is non compliance with the provisions of Rule-14 in as much as it can well be said that the prosecution has not proved by any cogent evidence the compliance with provisions of Rule 14. On the contrary in the deposition of original complainant it has come out unequivocally that the containers used in the instant case for collecting sample food article were not cleaned by the Inspector himself. In fact there is no elaborate, clear, positive evidence on this aspect, and therefore, even on this ground the acquittal

deserves to be sustained as it is rightly recorded by the trail court. Shri. Modi has further submitted that the service of notice under section 13 of the PFA Act needs to be proved. Shri. Modi has invited this Court's attention to the deposition of complainant wherein it has been admitted by the complainant that he has not done the procedure of issuing notice under section 13 (2) of the Act. He has said that it is true that exhibit-25 acknowledgment receipt contains signature of one “J. Shah” and from this fact it can be said that the prosecution has not proved service of the notice to the accused and as the accused is deprived of his legitimate right of receiving notice under section 13 (2) of the Act, the order of acquittal deserves to be sustained. Shri. Modi has relied upon the decision of this Court in case of STATE OF GUJARAT v. MEHBUB ABDULGANI KATHKI & ANR, reported in 2006 FAJ 116; another unreported decision rendered in Criminal Appeal No. 353 of 1992 with Criminal Appeal No. 1125 of 1991; in support of his submission that the prosecution have to lead positive evidence to prove service of notice, and also in support of his submission that when the acknowledgment due card does contain a

different name and or the signature of the accused as receiver is not proved then the entire case stands vitiated. Shri. Modi has submitted that this being an acquittal appeal unless & until it is proved by the appellant that the impugned judgment has brought about complete miscarriage of justice no interference is required in the order of acquittal. Shri. Modi has submitted that, in view of this, the appeal may be dismissed.

4. This Court has perused the relevant record and heard learned counsels for the parties at length. The trial court has recorded a finding that prosecution has failed in proving its case beyond doubt in as much as the total compliance with Rule 14 of the Rules has not been established by the prosecution. The trial court has also observed that the containers used for collecting sample of salt were not cleaned by the complainant nor had he any knowledge as to who did cleaning of the containers. The trial court's findings can not be said to be erroneous in light of the evidence on record which go to show that no evidence has come forward on the point as to whether the containers used for collecting samples were

cleaned in accordance with Rule-14 of the Rules.

5. Shri. Modi's submission in respect of notice being not served upon the accused can also not be brushed aside easily in light of the material on record. Shri. Modi invited this Court's attention to the fact that complainant himself has admitted in his deposition that the signature on acknowledgment due card at exhibit-25 read as “J. Shah” which is not the name of the accused. Shri. Patel, learned APP has stated that a close perusal of exhibit-25 indicate that the 'X'(cross) is made on the acknowledgment card so as to indicate the place of signature which is wrongly misconstrued to be letter 'J' and it should be read as “Shah” only and this should be treated as due service of notice. Shri. Patel's submission though appears to be attractive is not sufficient enough to help the case of the appellant at this stage. More over the fact remains that even if we accept the submission of Shri. Patel that it can be read as 'Shah' then also the fact remains to be noted that it was bounden duty cast upon the prosecution to prove service of the notice upon the accused. The record does

not have any other material to show that the notice was in fact served upon the accused. The trial court has also noted that the signature does not seem to be that of accused and the trial court has accepted the contention of the defence that the notice had never been served upon the accused.

6. This Court is mindful of the fact that this being an acquittal appeal, interference with the order of acquittal would be required to be made only when the appellant have successfully established the miscarriage of justice in the order of acquittal. The entire judgment of the trial court and the findings of non-compliance with provisions of Rule-14 and prosecution's failure in establishing compliance with Rule-14 and the submission made by Shri. Modi in respect of prosecution's failure in establishing due service would collectively go to show that the order of acquittal does not call for any interference.

7.In the result, this Court is of the considered opinion that, for the aforesaid reasons the order of acquittal impugned in the present appeal does not call for any interference and

hence, the appeal deserves to be dismissed and is accordingly dismissed.

[ S.R. BRAHMBHATT, J ]

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